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September 18, 2024

VIA Email

Honorable Freda L. Wolfson, U.S.D.J.
Lowenstein Sandler LLP
One Lowenstein Drive
Roseland, NJ 07068

**Re: Motion for Leave to File Surreply in Further Opposition to
SaveOnSP's August 30, 2024 Motion to Compel
Johnson & Johnson Health Care Systems Inc. v. Save On SP, LLC,
Civil Action No. 22-2632 (JKS) (CLW)**

Dear Judge Wolfson:

On behalf of JJHCS, we request leave to file this surreply concerning SaveOnSP's August 30, 2024 letter motion to compel JJHCS to produce documents elicited by three search terms related to JJHCS's vendors TrialCard and RISRx. We are reluctant to burden the Court with additional briefing, but unfortunately, SaveOnSP's September 16 reply brief—which is longer than its opening brief—is rife with new arguments and outright falsehoods. These tactics are not new. *See* May 22, 2024 Ltr. from J. Greenbaum to Hon. Wolfson at 1-2. Of the many new claims improperly raised by SaveOnSP for the first time in reply, JJHCS responds below only to the two most egregious ones. As to the rest of SaveOnSP's new material—including, for example, its ten new exhibits—JJHCS is prepared to address those upon the Court's request, or otherwise at oral argument.

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I. JJHCS Never Willingly Provided Copay Assistance to SaveOnSP

The Court should not be misled by SaveOnSP’s claim, on the first page of its reply, that “[f]or five years, [JJHCS] willingly paid copay assistance to patients on SaveOn-advised plans.” SaveOnSP cites not a single document to support this broad proposition, and for good reason: it is not true. To the contrary, as Your Honor may recall, JJHCS made an application to Judge Waldor on precisely this issue. JJHCS sought leave of Court to share SaveOnSP’s “patient list” with its relevant business personnel for the express purpose of stopping the payment of copay assistance to these same patients. SaveOnSP vehemently objected; Judge Waldor sided with SaveOnSP and denied JJHCS’s application; and to this day SaveOnSP is misappropriating tens of millions of dollars in CarePath funding each month as a result. Having blocked JJHCS from mitigating its damages, it is the height of hypocrisy for SaveOnSP to now claim that JJHCS is “willingly” making the very payments that JJHCS sought Court intervention to stop.

SaveOnSP’s reply seeks to obscure this history by distorting the record evidence of JJHCS’s mitigation efforts. Again, the Court should not accept SaveOnSP’s mischaracterizations. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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■ In sum, far from showing that JJHCS “willingly paid” out tens of millions of dollars for SaveOnSP to pocket for itself, the evidence at trial will show that SaveOnSP’s ever-changing deceptive tactics made it impossible for JJHCS to systematically and accurately identify SaveOnSP-affected patients.

II. JJHCS Never Withheld Evidence or Misled the Court

SaveOnSP closes its reply by suggesting that JJHCS “withheld” certain evidence related to its CAP program and participated in other “documented deception” related to “benefits investigations.” Reply at 9-10. Given the stunning degree of “documented deception” by SaveOnSP produced in discovery from its own files, it is understandable that SaveOnSP now hopes to project the same misconduct on JJHCS, the victim of its deceptive scheme. But SaveOnSP’s charge does not withstand even passing scrutiny. [REDACTED]

Second, as for SaveOnSP’s claim that JJHCS engaged in “documented deception” related to benefits investigations, here are the facts: in August 2023, in a brief opposing a SaveOnSP motion to compel, JJHCS stated “that documents related to ‘benefits investigations’ (i.e., efforts to confirm a patient’s insurance coverage and if the patient is required to make co-payments for a particular medication) are irrelevant to the enforcement of the ‘other offer’ provision at issue in this litigation.” Dkt. No. 163 at 1 (citing Dkt. No. 146 at 16, 20). That statement was, and remains, generally true. But counsel for JJHCS learned before argument on SaveOnSP’s motion that while the “vast majority

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of benefits investigations” are irrelevant (e.g., because they reflect whether a patient has commercial or government insurance), “in certain specific instances beginning in January 2022,” JJHCS vendors did conduct a certain type of benefits investigation “that could be relevant to the parties’ claims and defenses.” *Id.* JJHCS immediately advised Judge Waldor of this new information, and in the same submission, agreed to produce the relevant documents. *Id.* at 1-2. Thus, contrary to SaveOnSP’s “documented deception” smear, JJHCS conducted itself precisely as it should have done. And, to be clear, nothing about that year-old episode has the slightest relevance to the flawed search terms that are the actual subject of SaveOnSP’s motion.

We appreciate Your Honor’s attention to this matter.

Respectfully submitted,

/s/ Jeffrey J. Greenbaum

JEFFREY J. GREENBAUM

cc: All counsel of record

EXHIBITS 13-14
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